



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/779,725

02/18/2004

Jean-Louis Gueret

118556

1716

25944

7590

07/19/2006

OLIFF & BERRIDGE, PLC  
P.O. BOX 19928  
ALEXANDRIA, VA 22320

EXAMINER

RUNNING, RACHEL A

ART UNIT

PAPER NUMBER

3732

DATE MAILED: 07/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/779,725

Applicant(s)

GUERET, JEAN-LOUIS

Examiner

Rachel A. Running

Art Unit

3732

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 29-41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 1-41 are pending in this application. The examiner acknowledges the claim limitations to 30 and 34.

#### ***Election/Restrictions***

1. Claim 28 is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on January 5, 2006.

#### ***Drawings***

Examiner withdraws the objection to the drawings in Office Action dated March 14, 2006.

#### ***Claim Rejections - 35 USC § 112***

Claim 30 has been amended to overcome the rejection in the Office Action dated March 14, 2006; therefore, the 112 2<sup>nd</sup> paragraph rejection is withdrawn.

#### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless.—

Art Unit: 3732

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 7-10, 12, 16, 17, 25, 26, 30-35, and 37-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Gueret (U.S. Patent No. 5,391,011). Gueret discloses a base portion (20) carrying an applicator element (21) configured for fixing onto a receptacle (10) see Figures 2 and 3 (column 2, lines 35-45). A handle portion (30) rotably mounted on the base portion to turn about a fixed axis of rotation, wherein the axis of rotation and the longitudinal axis of the handle portion are not mutually perpendicular see Figure 3. The axis of rotation and the longitudinal axis are not parallel, and the axis of rotation and an axis of the base are not mutually perpendicular, because the handle can rotate at different positions relative to the longitudinal axis and the axis of the base is not specified. The base portion and the handle portion cooperate to enable a user to secure the handle portion in at least two predefined position relative to the base (column 3, lines 10-15). The base portion is arranged to be fixed on the neck of the receptacle by screw-fastening, and the fixing means is leaktight (column 2, lines 60-65). The base portion and the handle portion are made of a material that provides a good grip (column 2, lines 60-65). At least one of the base portion and the handle portion includes a pin (133), which is engaged in a housing in the base portion see Figure 3. The applicator includes a stem having a first end which comprises a brush (21) and a second end see Figure 3 (column 2, lines 40-45). The applicator is configured for applying a product on at least one of the lips, eyelids, eyelashes, eyebrows, and hairs of the user (column 1, lines 38-40).

Art Unit: 3732

3. Claims 1-6, 10-18, 20, 23, 25-27, 30, 33, 34, and 37-41 are rejected under 35 U.S.C. 102(b) as being anticipated by Stange (DE 296 14 364). Stange discloses a base portion (2) carrying an applicator element (4) configured for fixing onto a receptacle see Figures 1 and 2. A handle portion (3) rotably mounted on the base portion to turn about a fixed axis of rotation, wherein the axis of rotation and the longitudinal axis of the handle portion are not mutually perpendicular see Figures 2 and 3. The axis of rotation and the longitudinal axis are not parallel, and the axis of rotation and an axis of the base are not mutually perpendicular. The base portion and the handle portion co-operate to enable a user to secure the handle portion in at least two predefined position relative to the base see Figures 2 and 3. The handle portion (12) and the base portion (11) co-operate to produce a click sound see Figure 2. At least one of the base portion and the handle portion has a relief (5), which allows the base portion, and the handle portion to provide a good grip see Figure 1. The base portion includes a surface that is inclined relative to the axis of the base portion, and the axis of rotation extending substantially orthogonally to the inclined surface see Figure 2. At least one of the base portion and the handle portion includes a pin (9), which is engaged in a housing in the base portion see Figure 2. The handle portion includes an insert (10) that enables the handle portion to be fixed onto the base portion by snap-fastening see Figure 2. The applicator includes a stem having a first end which comprises a brush (4) and a second end see Figure 2. The applicator is configured for applying a product on at least one of the lips, eyelids, eyelashes, eyebrows, and hairs of the user.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Yamada (U.S. Patent No. 5,815,875). Stange discloses the claimed invention except for the pin being a split pin. Yamada teaches a split pin which secures a handle to base see Figure 4 and 5 (column 2, lines 40-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the pin of Stange be a split pin as taught by Yamada in order to allow the pin to fit into the hollow of the base and then lock into place by expanding.

6. Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange. Stange discloses the base portion including a pin arranged to be snap-fastened into the corresponding opening in the handle portion instead of the handle portion including a pin arranged to be snap-fastened into a corresponding opening in the base portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made have the handle portion include a pin arranged to be snap-fastened into a corresponding opening in the base portion, since it has been held that rearranging parts of an invention involves only routine skill in the art. In re Japikse, 86 USPQ 70.

7. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Riemann (U.S. Patent No. 4,922,575). Stange discloses the claimed invention except for the handle portion including fins and a body to which the fins are attached. Riemann teaches having fins (24b) on a handle portion see Figure 9 (column 1, lines 55-60). It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the handle portion of Stange with fins as taught by Riemann to provide the mechanical advantage of torque and improved gripping.

8. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Kingsford (U.S. Patent No. 5,137,038). Stange discloses the claimed invention except for the base portion and handle portion including at least one marker and the other base portion and handle portion including an index. Kingsford teaches having a base portion with an index (6) and a handle portion with a marker (5) see Figures 1 and 2 (column 3, lines 10-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the handle and base of Stange with an index and maker as taught by Kingsford in order to allow the user to move the handle and base to the next position by aligning the maker and index.

9. Claims 27 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (U.S. Patent No. 5,894,847). Gueret '011 discloses the claimed invention except for the brush having a non-rectilinear core (claim 27), and the receptacle including a wiper member (claim 36). Gueret '847 teaches having a non-rectilinear core (522) and a wiper member (521) see Figure 5 (column 2, lines 20-25 and 40-45). Regarding claim 27, it would have been obvious to one of ordinary skill in the art at the

Art Unit: 3732

time the invention was made to make the applicator brush of Gueret '011 non-rectilinear as taught by Gueret '847 in order to have the brush contour to the user's eyelashes.

Regarding claim 36, it would have been obvious to one having ordinary skill in the art at the time the invention was made to make the receptacle of Gueret '011 have a wiper member as taught by Gueret '847 in order to allow the wiper element wipe off excess mascara from the brush.

10. Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stange in view of Samaras et al. (U.S. Patent No. 3,164,856). Stange discloses the claimed invention except for the applicator element being removable from the base portion.

Samaras et al. teaches an interchangeable applicator portion see Figure 1 (column 3, lines 1-10). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the applicator portion of Stange be removable as taught by Samaras et al. in order to allow the user to interchange the brushes in order to allow a different user to use a different applicator.

### ***Response to Arguments***

11. Applicant's arguments filed June 14, 2006 have been fully considered but they are not persuasive.

12. Applicant argues that Gueret and Strange do not disclose "the axis of rotation and the longitudinal axis of the handle portion are not mutually perpendicular" as stated in claims 1 and 33. Gueret has a handle portion having a longitudinal axis, wherein the handle is capable of being rotated about an axis and at certain points of rotation the



Art Unit: 3732

handle portion is not perpendicular with the axis of rotation see Figures 3-5. Strange also has a handle portion having a longitudinal axis, wherein the handle is rotated in steps of 5 to 45 degrees, therefore, at certain steps the axis of rotation and the longitudinal axis of the handle portion not mutually perpendicular.

13. Applicant argues that Gueret and Strange do not disclose, “an angle between the axis of the base portion and the axis of the handle portion is always strictly inferior to 90 ° when the handle portion is rotated about the axis of rotation” emphasis added as stated in claim 34. Gueret is capable of having the angle between the axis of the base portion and the axis of the handle portion always being strictly inferior to 90°, the term “always” does not add any further structural limitation to the claim, furthermore, when the handle of Gueret is in an upright state as shown in Figure 2 the axis of the handle portion and the axis of the base portion is at 0° which is inferior to 90°. Strange also is capable of having the angle between the axis of the base portion and the axis of the handle portion always being strictly inferior to 90°, since the handle is rotated in steps of 5-45 degrees.

14. Applicant argues that Strange is not configured to be fixed onto a receptacle as recited in claim 1. The intended use statement “configured for” is not given weight in an article claim; the applicator of Strange is capable of being configured to a receptacle. Moreover, Applicant has not positively claimed a receptacle and applicator in claim 1. Applicant further argues that the brush of Strange is not configured for applying a product on at least one of lips, eyelids, eyelashes, eyebrows, and hairs as stated in claim 33. A shaving brush applies shaving cream to hairs (for example a beard) and

Art Unit: 3732

hence meets the claim limitation of applying a product on at least one of lips, eyelids, eyelashes, eyebrows, and hairs as stated in claim 33.

### ***Conclusion***

15. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

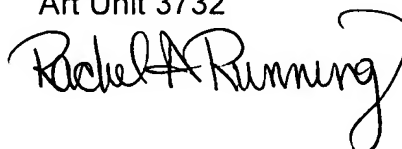
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 7:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3732

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Rachel A. Running  
Examiner  
Art Unit 3732



  
CRIS L. RODRIGUEZ  
PRIMARY EXAMINER